



IPAMS
Independent
Petroleum
Association
of
Mountain
States

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May 27, 1997



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Mr. David S. Guzy
Chief, Rules and Procedures Staff
Royalty Management Program
Minerals Management Service
P. O. Box 25165, MS 3101
Denver, CO 80225-0165

RE: Delegation of Royalty Management Functions to States
62 FR 19967, April 24, 1997

Dear Mr. Guzy:

I write today to offer comments on behalf of the Independent Petroleum Association of Mountain States (IPAMS) regarding the above-referenced proposed rulemaking. IPAMS is a non-profit, non-partisan trade association representing the interests of over 700 independent oil and natural gas producers, service/supply companies, royalty owners and energy consultants operating in the Rocky Mountain states of Wyoming, New Mexico, Colorado, Utah, Montana, North Dakota, South Dakota, Nebraska, Arizona, Nevada, Idaho, Oregon and Washington. Most of our members are lessees of federal lands which, accordingly, pay rentals, bonuses and royalties to the federal government. As such, IPAMS has a critical interest in the royalty management affairs of the Minerals Management Service.

The requirement to promulgate standards and regulations for delegating royalty management functions to the states was mandated by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. The industry in general, and IPAMS in particular, supported the delegation provisions of FOGRSFA in the belief that it was appropriate for the states to assume the responsibility for performing certain of these functions, and that the ensuing system would achieve the FOGRSFA goals of simplicity, certainty and clarity in the payment and collection of federal royalties.

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General Comments

As you know, IPAMS has sought from the outset to participate in the development of the regulations and standards for delegation. Our members are concerned that regulations and standards be developed which eliminate duplication, demand uniformity among the states, protect confidential and proprietary information, and involve federal lessees to the greatest extent possible in both development of the regulations and standards and in oversight of the program.

While we are pleased to see language is included in the proposed rule encouraging that steps be taken to minimize the lessee's burden, ensure uniformity, eliminate duplication and protect confidential data, IPAMS is still concerned that without industry participation in the process, this may not be the case. There has been a remarkable lack of industry involvement in the process thus far. Although MMS conducted outreach meetings with industry in January of this year, only an outline of the draft proposed rule was shared with industry at that time. Since then, there has been virtually no communication with industry concerning the regulations or the standards. Industry has neither been encouraged nor permitted to provide input. While we can understand that delegation of functions *might* be viewed as principally an issue between MMS and the states, as federal lessees which could be profoundly affected by such delegation, IPAMS is extremely interested in actively participating in the process and, moreover, believes industry's participation is critical to the development of regulations and standards which will indeed achieve the objectives of FOGRSFA.

One of IPAMS' primary concerns is that the standards for delegation -- which are supposed to be the substance of the delegation process -- are referred to repeatedly throughout the proposed rule, but are yet to be developed. In fact, IPAMS has been told that industry may not be able to review even the *framework* for the standards prior to the outreach meetings in June. In addition, because it appears the standards would only be published in *Notice* format in the Federal Register, industry may be precluded from any *substantive* opportunity to comment on them. FOGRSFA requires that MMS promulgate by rule standards and regulations pertaining to responsibilities under delegation. So, not only has industry been precluded from participating in the development of the regulations and standards, it now seems industry may be deprived of an adequate opportunity to comment on them.

IPAMS believes this is a critical flaw in the process. Even FACA requires that the industry be included in the development of regulations which have a potential impact on it. IPAMS believes the standards should have been published along with the proposed rule and included in the regulations. Therefore, we request the comment period be extended until after

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the standards have been presented to and discussed thoroughly with industry. IPAMS looks forward to the meetings with MMS in June and such an opportunity.

It is unfortunate MMS has seen fit not to bring industry and the states together with MMS to discuss these issues in a public format. It is only logical that MMS, the states, and industry should be working to cooperatively develop the standards and regulations that will govern the delegation of royalty management functions to the states.

Specific Comments

IPAMS notes a contradiction between the preamble and the regulations with respect to MMS action in cases where a state has failed to comply with the delegation standards or its delegation agreement. The preamble, on page 19976, discussing Section 227.801, paragraph (a) indicates: "MMS would notify a State in writing of its noncompliance or inability to comply with its delegation agreement, or the *Standards*, or the statutory requirements under § 227.106" (emphasis added). However, the regulations, on page 19984, in the paragraph immediately preceding paragraph (a), state: "If your performance of the delegated function does not comply with your delegation agreement, or the *Standards*, or if MMS finds that you can no longer meet the statutory requirements under § 227.106 of this part, then MMS may: (a) Notify you in writing of your noncompliance or inability to comply..." (emphasis added).

As explained to me, MMS feels it must maintain flexibility to correct minor errors and assist states on the learning curve in implementing a brand new process. However, IPAMS believes it is appropriate to notify the state *in writing* of any deficiencies in its performance of the delegated functions, except perhaps in cases of the most minor breach of the delegation agreement or standards. This process would also aid in establishing a record and in documenting an habitual trend, which would be beneficial should the state fail or refuse to comply with prescribed corrective actions.

Moreover, IPAMS believes that in cases where a state has failed to take the corrective action and/or continues in breach of the delegation agreement or standards, MMS must take action under the regulations to either initiate termination proceedings, withhold compensation, or perform the delegated function. Therefore, rather than stating MMS *may* take action, IPAMS recommends that paragraph 227.801(b) be revised to state: "If you do not take the prescribed corrective actions within the time that MMS allows in a notice issued under paragraph (1) of this section, then MMS will either: (1) Initiate proceedings...". MMS must preserve its authority to enforce the delegation agreements and delegation standards.

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Section 227.103(l)

This paragraph ends with "...; and". Is this simply a typographical error, or has something been omitted from this provision?

Section 227.110

IPAMS recommends MMS publish notice of a state's request to renew its delegation (in addition to a state's request for delegation), and that upon such notice, any affected or interested party -- including industry -- could request a hearing. This will provide an opportunity to identify those areas where a state has excelled in its performance of the delegated functions, as well as to identify any areas where there may be deficiencies in a state's performance. It also provides industry with opportunity for ongoing input and participation in the delegation process.

Section 227.200(a)

IPAMS strongly supports the requirement for a state to submit a written request for interpretation of applicable Federal requirements and for MMS to respond to the request in writing. Besides ensuring uniform and consistent application of Federal requirements, it will also provide lessees with greater certainty that they are properly reporting and paying their royalties.

Section 227.400(b)(1) and (2)

These paragraphs allow states to grant exceptions from reporting and payment requirements for marginal properties and approve alternative royalty and payment requirements for units and communitization agreements. Will a lessee be able to appeal a state's denial of his request for for an exception or alternative method to MMS? It should be clarified in the final regulations that this will be the case.

Section 227.601(d)

We believe the word *update* in the fourth line of this paragraph should be *updated*.

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Section 227.800

IPAMS believes it is imperative that MMS establish a monitoring team to review and monitor the states' performance of delegated functions. Utilizing MMS experts from each of the delegated function areas would be most effective. IPAMS recommends that the monitoring team consult with affected payors on a regular basis. We also recommend the monitoring team be designated as the primary contact to which industry would report concerns about a state's performance of its delegated functions.

Section 227.804

In the preamble, MMS discusses that industry would require 90 days to readjust its systems to reflect any changes in the event of a state's termination of its delegation. IPAMS believes 180 days is a more appropriate time frame. In addition, we recommend MMS add a provision to the regulations that affected payors be notified when a state tenders its notice to terminate, and that the 180 days period begin on the date such notice is mailed to payors.

MMS Requests for Comment

MMS requests comment on whether there is any additional information that should be required in a state's delegation proposal. It appears to IPAMS that the information needed to determine a state's ability to assume the delegated functions is, by and large, accounted for. However, IPAMS would like to emphasize our strong belief that industry must be involved early in the delegation process. Timely access to delegation proposals will better assist in determining the impacts of a delegation proposal as well as whether a proposal may create an unanticipated burden on the industry.

MMS requests comment on whether it should establish an advisory committee comprised of States receiving delegations and MMS representatives, to provide advice and recommendations about the standards and procedures for performing delegable functions. IPAMS agrees a committee of this kind would provide a valuable service; however, we believe industry representatives must be included on the advisory committee in order to provide a more comprehensive discussion of all relevant issues, in addition to monitoring impacts and potential impacts to industry as a result of delegation.

MMS requests comment on any aspect of the reporting burden. IPAMS is concerned about the increased reporting burden. Whereas, the delegation will likely have little impact on payors which report and pay on leases in only one delegated state, the potential exists for

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imposition of a tremendous administrative burden which could be difficult for small independent producers to comply with, particularly those which own leases in more than one state that assumes royalty management functions. It appears MMS is committed to minimizing the burden on reporters by eliminating duplication, requiring a uniform reporting format, and allowing affected lessees and designees to work with the delegated state and MMS to develop any alternative reporting procedures. However, industry's exclusion from participation in the delegation process thus far has given rise to a great many concerns, and many more in view of MMS' own estimated annual burden and cost to industry. Again, industry's ongoing involvement in the process would do much to alleviate IPAMS' concerns and assure our members that a reasonable and non-duplicative program is being developed.

Conclusion

In conclusion, IPAMS' principal concern with the proposed rule revolves around the incredible lack of industry participation in the delegation process. Since the passage of FOGRSFA, IPAMS has stated repeatedly its desire and willingness to be involved in the process. As noted above, IPAMS members stand to be significantly affected by these regulations and the delegation standards and therefore continue to have a strong desire to be actively involved *on an ongoing basis* in the delegation process.

IPAMS believes that only through meaningful participation in a partnership among industry, the states and MMS can an effective royalty management program that meets the objectives of FOGRSFA be implemented. There is clearly no reason to exclude industry from involvement in the process. IPAMS recommends the comment period on the proposed rule be extended until industry has had an opportunity to also review and comment on the proposed standards for delegation, inasmuch as they are a cardinal component of the regulations governing delegation.